



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

DEC 19 1997

Cynthia L. Johnson, Director
Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420
14th Street, S.W.
Washington, D.C. 20227

Dear Ms. Johnson:

On September 16, 1997 Treasury published a notice of proposed rulemaking at 31 CFR Part 208, under the Debt Collection Improvement Act (DCIA) that requires Federal agencies to convert all federal payments from checks to Electronic Funds Transfer (EFT). The Department of Health and Human Services (HHS) supports the mandatory EFT requirement and is actively working to comply with the requirements by January 1999. However, we have a number of questions/concerns regarding the proposed rule and are providing the following comments.

Remittance Data/Registration Issues

1. As part of the discussion pertaining to Section 208.4, Treasury states that commenters stressed the importance of passing remittance data to the vendors, stating that the lack of remittance data is the primary reason why vendors are reluctant to receive payments by EFT. Additionally, a significant number of banks charge their customers a fee to provide this information. This is a burden for some small businesses. Treasury states that it is working with agencies, the financial industry, and vendors to solve the remittance data problem. However, the proposed rule does not contain a waiver for vendor payments because Treasury expects that, as a result these efforts, the problem of making remittance data readily available will be solved by January 1999. We believe these issues must be addressed and resolved with the banking industry before implementation of the proposed rulemaking. Otherwise, an increased workload at the agency level will result from responding to vendor queries concerning the reason for their payments.

2. We would like Treasury to go further than just "encouraging" procurement officials to collect EFT information as a condition of awarding contracts or issuing purchase orders. We recommend that Treasury work with the General Services Administration to modify the Federal Acquisition Regulation to maximize the collection of banking information as a condition of the award.

3. HHS is concerned about the duplication of effort in collecting banking information. Treasury should consider building a centralized registry system. We believe that a greater cost savings would accrue to the Government if the process was centralized because it would eliminate the duplicate efforts that agencies are currently expending collecting the

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identical information from the same vendors.

Prompt Pay Issues

1. HHS is concerned about the proposed rulemaking relationship to the Prompt Pay Act. We recommend that Treasury work with the OMB to modify the Prompt Payment Circular A-125 to: (1) make it mandatory for a recipient of a Federal payment to submit banking information as a precondition for payment and (2) state that late payment interest penalties do not accrue for any payment delays resulting from noncompliance by the recipient.

Waivers

1. Ref: 208.7(b): This provision directs agencies to obtain from individuals, who do not have an account at a financial institution, a written certification of this condition. The proposed rule indicates that Treasury will provide these eligible individuals access to an account in accordance with paragraph 208.5. The Treasury plan is to have an account available at a reasonable cost nationwide by January 2, 1999. We recognize that the details on the design of the account have not been defined, however, we are curious whether the "reasonable cost" would be borne by the agency or by the recipient. The proposed rule does not outline the steps on how the agency will interact with the Treasury on coordinating these individual certifications. We assume the management of such an account arrangement would be Treasury's responsibility and therefore we would refer any recipient who requests such an account directly to Treasury for guidance and handling.

2. One of our components, the National Institute of Health (NIH), operates a clinical center. The NIH Clinical Center requires emergency check or cash payments to patients for emergency needs. We are exploring alternative methods for converting the payments to meet the EFT mandate. However, patients are sometimes transient or reluctant to provide any information that they feel is a violation of their privacy. Also, NIH relies heavily on volunteers participating in various studies and research. These volunteers may be sensitive concerning the disease under study or the protocol. NIH must have discretion in permitting waivers, without the patient requesting and filing a waiver form, or their mission to conduct research may be hampered. It may also create unacceptable hardships in dealing with emergency funds to critically ill patients. We recommend that the rule should permit agencies to grant waivers without the need for the patients to request a waiver for reasons related to health or privacy concerns.

3. The proposed rule indicates that individuals may apply for waivers by certifying that EFT would impose a hardship due to one of the enumerated barriers in 208.4, and that agencies will not evaluate an individual's circumstances. Moreover, the waiver will be automatic and based on the individual's certification. We think this provision should be modified to permit agencies to question certifications where they have reason to suspect the validity of the certification in the context of Federal employees receiving reimbursement for job related expenses. An example would be an employee who certified that they do not have a bank account for travel reimbursement while receiving salary payments by EFT. We believe the employing agency should be permitted to evaluate such claims prior to granting waivers.

Third Party Payments

We have discussed the issue of third party contractor payments with the Treasury. However, the proposed rule does not address the issue. Third party payments are payments made by contractors on the behalf of a Federal agency. The payments are not made or certified by a Federal agency, and are not disbursed by Treasury or Non Treasury Disbursing Offices. The contractors issue payments on their own bank accounts and are reimbursed by the Federal agency. HHS has two components, the Indian Health Service (IHS) and the Health Care Financing Administration (HCFA) that use third party contractors to make payments for health care services and Medicare benefits. IHS has a third party relationship whereby a third party contractor acts as Fiscal Intermediary (FI) to review claims submitted by health care providers and make payments on IHS' behalf. (IHS reimburses the contractor by EFT.) The contractors would have to make massive changes to an existing infrastructure at great cost to convert all payments to EFT. IHS is exploring whether it would be cost beneficial to convert all payments to EFT; if so, they plan to do so.

HCFA's Office of General Counsel (OGC) has advised them that Medicare payments made by contractors are not subject to the mandated EFT provision. The OGC maintains that the Medicare statute provides that payments are determined, authorized and issued by private entities (intermediaries and carriers) pursuant to 42 U.S.C. 1395h and 1395u. The proposed Treasury rule 31 CFR Part 208 is silent regarding Medicare payments, although section 208.2 defines as a "Federal payment," benefit payments made by an agency. As indicated, Medicare payments are issued by intermediaries and carriers pursuant to 42 U.S.C. 1395h and 1395u rather than by a Federal agency as defined by section 31001(x) of the DCIA and section 208.2(a) of the proposed Treasury rule. The OGC further maintains that since they are not made or certified by a Federal agency, they are not "Federal payments" as defined by section 31001(x) of the DCIA and section 208.2(d) of the proposed Treasury rule. Moreover, the cost of Medicare operations is borne by the Medicare trust funds established by 42 U.S.C. 1395I and 1395t, rather than the Treasury. HCFA's intermediaries and carriers are currently using EFT when it is cost beneficial to do so. In addition HCFA's reimbursements to the contractors are all made by EFT.

Inter-Governmental Payments

There is still a government wide problem in that the Department of Defense agencies still require check payment in many cases. There is nothing in this rule to address this issue.

If you have any questions regarding our comments, please contact Tom Doherty, Director Office of Financial Systems on 202-690-6488.

Sincerely,



George Strader
Deputy Assistant Secretary,
Finance/Deputy Chief Financial Officer